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CIVIL LAW: INTRODUCTION TO THE LAW OF OBLIGATIONS

Professor Catherine Valcke

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CIVIL LAW: INTRODUCTION TO THE LAW OF OBLIGATIONS

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- Portalis, "Discours préliminaire prononcé lors de la présentation du projet" in Fenet, Recueil complet des travaux préparatoires du Code civil, vol. I, pp. 463ff
- Castel, The Civil Law System of the Province of Quebec, pp. 8-34
- Brierley, " Quebec's Civil Law Codification: Viewed and Reviewed" 14 McGill L. J. 521 (1968), pp. 526-42
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- Dorion, "La philosophie du Code civil," 4 R. de D. 134 (1925-26), pp. 134-139
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- Planiol and Ripert, Treatise on the Civil Law, vol. II, part 1, §§ 869C-872A
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- Crépeau, "Le contenu obligationnel d'un contrat," Can. Bar Rev. 1 (1965), pp. 29ff
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- Tancelin, Des Obligations, pp. 377-82.
- Massé, "L'exécution des obligations via l'astreinte française et l'injonction québécoise" 44 R. du B. 659 (1984), pp. 660-666
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- Joron, "Nature et effet de l'hypothèque" 36 R. du N. 145 (1933), p. 148
- Caisse populaire de Scott v. Guillemette, [1962] B.R. 293
- Planiol and Ripert, Traité élémentaire de droit civil, vol. II, p. 1008
- Ginossar, Droit réel, propriété et créance, pp. 1-18
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- von Mehren, The Civil Law System, pp. 474-79
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- Schmidt, "La sanction de la faute précontractuelle" 72 R.T.D.C. 46 (1974), pp. 62-4
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- Ghestin, Traité de droit civil: les obligations, le contrat, pp. 397-401
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- Rosconi and Lussier v. Dubois and Goulet [1951] S.C.R. 554, as edited by Tancelin, Jurisprudence sur les obligations, pp. 100-01
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- David, "Cause et considération" in Mélanges Maury, vol. II, pp. 111-22, 130-37
- J. Donat Langelier Ltd. v. Demers, [1928] R.J.Q. 120
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- Litvinoff, "La justice contractuelle" in Conseil de la langue française du Québec, Codification: valeurs et langage, Actes du colloque international droit civil

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- Société économique de Rennes v. Picard Cass. Dec. 28, 1932, D.1933. I. 87
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- Neagu v. Motor Sport Rive Sud Inc., [1978] C.S. 909, as edited by Tancelin, pp. 68-9
- Jobin, "Les prochaines dispositions sur l'exploitation" 1o R.G.D. 132 (1979), pp. 135-139

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- Schlesinger, Comparative Law, p. 622
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- Baudoin, Le droit civil de la province de Québec, pp. 583-593
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- Ghestin, "L'utile et le juste" 1982 D. Chron. 1, pp. 2-10
- Tallon, "Considérations sur la notion d'ordre public en droit français et en droit anglais" in Mélanges René Savatier 883 (1965)
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* - Consumer Protection Act, R.S.Q. 1977, c. P-40
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- Kronman, Max Weber, pp. 45-7, 50-6, 72-80
- Watson, The Making of the Civil Law, pp. 32-8
- Merryman, The Civil Law Tradition, pp. 151-58
- Rémy, "Les civilistes français vont-ils disparaître?" 32 McGill L. J. 152 (1986)
- Morissette, "Une épistémologie du droit: L'état providence de François Ewald" 28 C. de D. 407 (1987)
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